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Appearing In Propria Persona

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MDL-15-02641-PHX-DGC

**BCM's MOTION AND
MEMORANDUM IN SUPPORT
TO FILE DECLARATION AND
EXHIBITS UNDER SEAL**

(Assigned to the Honorable David G.
Campbell)

Comes now the Law Offices of Ben C. Martin and the law firm of Martin|Baughman (collectively, "BCM"), and submits this Motion and Memorandum in Support to File Declaration and Exhibits Under Seal, and in support thereof would respectfully show the Court as follows:

The Declaration of Ben C. Martin provides the factual basis for BCM's Emergency Motion to Stay Distribution Pending Appeal ("BCM's Motion"), and the Declaration itself contains settlement amounts which are confidential per the settlement agreement. Further, the Exhibits attached to the Declaration reveal the identities of BCM's clients – including clients who never filed a lawsuit against

1 Defendants. Although “access to judicial records is not absolute,” parties seeking
2 to seal a judicial record must satisfy the “compelling reasons” standard.¹
3 Compelling reasons to seal records exist when the records: (1) “could be a vehicle
4 for improper purposes, such as the use of records to gratify private spite, promote
5 public scandal, circulate libelous statements, or release trade secrets;”² (2) contain
6 “information about proprietary business operations, [or] a company’s business
7 model or agreements with clients;”³ and (3) reveal “sales figures, advertising
8 numbers, and strategy information.”⁴

9 Here, the Declaration and Exhibits to the Declaration of Ben C. Martin
10 should be filed under seal for each of the three compelling reasons articulated by
11 courts in this Circuit. Under the first prong, the facts in the Declaration and Exhibits
12 could be a vehicle for improper purposes because they reveal the number and
13 identities of people who have settled their claims with Defendants, including those
14 who never filed a lawsuit against Defendants, and settlement amounts. Public
15 availability of the above information permits improper use: (1) by an industry
16 competitor to gratify its spite against Defendants or Plaintiffs’ counsel; (2) by media
17 to promote public scandal against medical devices, Plaintiffs’ counsel, or the BCM
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19 ¹ *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

20 ² *Id.* at 1179.

21 ³ *Selling Source, LLC v. Red River Ventures, LLC*, 2:09-CV-01491-JCM, 2011 WL
1630338 (D. Nev. Apr. 29, 2011).

22 ⁴ *JL Bev. Co. v. Beam, Inc.*, No. 2:11-cv-00417-MMD-CWH, 2013 U.S. Dist. LEXIS
35370, at *10 (D. Nev. 2013), *rev’d on other grounds*, *JL Bev. Co., LLC v. Jim Beam
Brands Co.*, 828 F.3d 1098, 1101 (9th Cir. 2016).

1 clients identified in the Exhibits; and/or (3) by litigants and litigators to circulate
2 libelous statements against law firms or BCM's clients who may have achieved less
3 (or more) success against Defendants. Accordingly, compelling reasons support
4 filing the Exhibits under seal.

5 Under the second and third prongs, the Declaration and Exhibits should be
6 sealed because they reveal BCM's agreements with specifically identified clients,
7 who have not filed a lawsuit against Defendants, and the amounts of settlements.
8 Those identities and settlement amounts, while necessary and sufficient to justify
9 the relief sought by BCM's Motion, serve no other legitimate purpose when publicly
10 disseminated. To the contrary, keeping the identities and monetary amounts private
11 – especially with respect to those who never filed a lawsuit against Defendants –
12 allows BCM and its clients to benefit from their agreements without fear of public
13 disclosure or future harassment. Moreover, BCM's clients have an interest in not
14 having their individual litigation, injury, and settlement status publicly revealed.
15 Accordingly, compelling reasons support filing the Exhibits under seal.

16 Additionally, the Ninth Circuit has observed “the public policies that support
17 the right of access to dispositive motions, and related materials, do not apply with
18 equal force to non-dispositive materials.”⁵ Here, the Declaration and Exhibits
19 support a non-dispositive motion, which will not impact the public's understanding
20 of the claims against Defendants in the MDL or the final resolution of those claims.

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⁵ *Kamakana*, 447 F.3d at 1179.

1 Accordingly, the Court should permit BCM to file the Declaration of Ben C. Martin
2 and Exhibits to the Declaration under seal.

3 **WHEREFORE, PREMISES CONSIDERED**, the Court should grant this
4 Motion in its entirety, permit BCM to file the Declaration of Ben C. Martin and the
5 Exhibits attached to the Declaration under seal, and provide BCM with all such
6 other and further relief to which it may show itself justly entitled.

7 RESPECTFULLY SUBMITTED this 6th day of June, 2022.

8 /s/ Ben C. Martin

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 6th day of June, 2022, I electronically transmitted
15 the attached document to the Clerk's Office using the CM/ECF System for filing
16 and transmittal of a Notice of Electronic Filing.

17 /s/ Ben C. Martin

18 Ben C. Martin